IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION No.124 of 2007
Date of Decision : 31.07.2007

Kanwal Singh .....Petitioner

versus

Smt.Bhoti and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.Ravinder Malik, Advocate for the petitioner.
Mr.Sandeep K. Sharma, Advocate for respondent Nos.2 to 13.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition is to the order dated 13.12.2006 passed by the learned trial Court, whereby the plaintiff has been called upon to affix the ad-valorem Court fee as per the value of the sale deed dated 9.9.2003.

Vide sale deed dated 9.9.2003, the defendant Nos.1 to 5 sold the land measuring 7 bighas 4 biswas in favour of defendant Nos.6 to 13 for the sale consideration of Rs.4,15,000/-, on which the Court fee payable is Rs.21,970/-. It is the case of the plaintiff-petitioner that the plaintiff and Ram Sarup, father of defendant Nos.2 to 5 were the real brothers and formed a joint Hindu Family. The land measuring 7 bighas 4 biswas was purchased for consideration paid from joint family account, though the sale deed was got executed in favour of Ram Sarup alone.

It is well settled law that for the purpose of determining the question whether the proper Court fee has been affixed, it is the averments in the plaint which have to be read. A perusal of the plaint would show that the challenge in the sale deed is for the reason that the property sold is the joint Hindu Family property. If the challenge in the sale deed executed by the *Karta* of a joint Hindu Family property, then the Court fee payable is not as per the market value mentioned in the sale deed. The issue regarding payment of ad-valorem Court fee in such circumstances is explained in the Full Bench judgment of this Court ***"Niranjan Kaur versus Nirbigan Kaur -1981 P.L.J.-423,"*** and it has been considered by this Court in cases "**Smt.Beena and others versus Rajinder Kumar and others, 2006 (2) R.C.R.(Civil)-449"; "Bhagwan Kaur and others versus Amrik Singh and others (Civil Revision No.790 of 2005, decided on 8.8.2006)"** and **"Dr.Ashok Kumar Goyal versus Arya Mittar and others (Civil Revision No.4265 of 2005, decided on 15.12.2006)",** wherein it has been held that in such a suit the Court fee payable is in terms of Section 7 (iv) © of the Court Fees Act, 1870 and quantified under Section 7 (v) of the Act as amended in the State of Haryana in the year 1974.

In view of the above, the order passed by the learned trial Court dated 13.12.2006 suffers from patent illegality and irregularity. Consequently, the order dated 13.12.2006, passed by the learned trial Court is set-aside. The present revision petition is allowed.

31-07-2007 (HEMANT GUPTA)
*mohinder JUDGE